

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA
ex rel. SAMUEL CAUGHRON, M.D.,

Plaintiff,

- against -

GENOMIC HEALTH, INC.,

Defendant.

**AMENDED STIPULATION
AND ORDER
TO BE FILED UNDER SEAL**

Civil Action No.
16-CV-4038

(DeArcy Hall, J)
(Levy, M.J.)
(FILED UNDER SEAL)

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UNITED STATES OF AMERICA
ex rel. DOE,

Plaintiff,

- against -

GENOMIC HEALTH, INC. et al.,

Defendants.

Civil Action No.
17-CV-4460

(DeArcy Hall, J)
(Levy, M.J.)
(FILED UNDER SEAL)

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AMENDED STIPULATION AND ORDER TO BE FILED UNDER SEAL

WHEREAS, on or about July 21, 2016, Samuel Caughron, M.D. (“Relator Caughron”) filed Case No. 16-CV-4038 (the “GHI Action”), in which Relator asserted claims on behalf of the United States pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3730 *et seq.*;

WHEREAS, on or about March 17, 2017, Jane Doe (“Relator Doe”) filed an action in the Eastern District of Wisconsin, which, on July 28, 2017, was transferred to the Eastern District of New York and assigned Case No. 17-CV-4460 (the “Doe Action”), in which Relator

Doe asserted claims on behalf of the United States pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3730 *et seq.*;

WHEREAS, on November 11, 2019, defendant Genomic Health, Inc. was acquired by Exact Sciences Corp.;

WHEREAS, by prior Orders of the Court, the Court, among other things, partially lifted the seal for the limited purpose of disclosing Relators' complaint in this action to other relators and to defendants in the above-referenced actions at the discretion of the United States and further ordered that the complaints and other documents in these cases remain under seal;

WHEREAS, by prior Orders of the Court, the seal and intervention deadlines for these two actions has been extended to August 28, 2023;

WHEREAS, under the existing orders both Relators identities remain under seal;

WHEREAS, the United States is engaged in settlement discussions with defendant Genomic Health Inc. and its successor Exact Sciences Corp. in the above captioned actions;

WHEREAS, in the preparation and exchange of a Settlement Agreement with defendant Genomic Health Inc. and its successor Exact Sciences Corp., it will be necessary to disclose the identity of the Relators;

WHEREAS, once the Settling Parties execute the Settlement Agreement, Relator Caughron and Relator Doe will file Stipulations of Dismissal in both the GHI Action and the Doe Action, which will provide for, respectively, dismissal of the GHI Action with prejudice as to Relator Caughron and without prejudice as to the United States, and for dismissal of the Doe Action with prejudice as to Relator Doe's claims against Defendant Genomic Health Inc. and its successor, Defendant Exact Sciences Corp., but without prejudice as to Relator Doe's claims against the remaining Defendants, and without prejudice as to the United States;

U.S. ex rel. Samuel Caughron, M.D. v. Genomic Health, Inc. 16-CV-4038
U.S. ex rel. Doe v. Genomic Health, Inc. et al., 17-CV-4460
Stipulation and Order Filed Under Seal

WHEREAS, in order for the United States to be able to announce the Settlement Agreement upon its execution and to publicly release the Settlement Agreement, the United States respectfully requests that the Complaint filed in the GHI Action (16-CV-4038) and the First Amended Complaint filed in the Doe Action (17-CV-4460) be unsealed upon the execution of the Settlement Agreement, with the remainder of the docket remaining under seal;

THEREFORE, IT IS HEREBY ORDERED that:

1. For purposes of settlement only, the United States may disclose the identities of the Relators in the exchange of a Settlement Agreement with defendant Genomic Health Inc. and its parent Exact Sciences Corp. Defendant and Exact Sciences Corp. shall be advised that the identities of Relators may not be disclosed except as necessary to conclude the settlement.

2. Upon the execution of the Settlement Agreement, the cases captioned *U.S. ex rel. Samuel Caughron, M.D. v. Genomic Health, Inc.*, 16-CV-4038, and *U.S. ex rel. Doe v. Genomic Health, Inc. et al.*, 17-CV-4460, shall be unsealed, as set forth below:

A. The Complaint in *U.S. ex rel. Samuel Caughron, M.D. v. Genomic Health, Inc.*, 16-CV-4038, filed on July 21, 2016, shall be unsealed.

B. The First Amended Complaint in *U.S. ex rel. Doe v. Genomic Health, Inc. et al.*, 17-CV-4460, filed on May 11, 2018, shall be unsealed.

C. This Amended Stipulation and Order, as well as all documents filed in *U.S. ex rel. Samuel Caughron, M.D. v. Genomic Health, Inc.*, 16-CV-4038, and *U.S. ex rel. Doe v. Genomic Health, Inc. et al.*, 17-CV-4460, prior to the date of the unsealing, other than the Complaints set forth in Paragraphs 2. A. and B. above, shall remain under seal.

U.S. ex rel. Samuel Caughron, M.D. v. Genomic Health, Inc. 16-CV-4038
U.S. ex rel. Doe v. Genomic Health, Inc. et al., 17-CV-4460
Stipulation and Order Filed Under Seal

D. All documents filed in *U.S. ex rel. Samuel Caughron, M.D. v. Genomic Health, Inc.*, 16-CV-4038, and *U.S. ex rel. Doe v. Genomic Health, Inc. et al.*, 17-CV-4460, after the date of the unsealing shall be unsealed and filed on the public docket.

3. The United States, as well as the Relators, shall be permitted to publicly announce the Settlement Agreement and to provide a copy of same.

4. The Clerk of the Court shall provide the United States Attorney's Office, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201, Attn: Deborah B. Zwany, with a copy of this fully executed order by email to Deborah.Zwany@usdoj.gov.

Dated: Brooklyn, New York
June 13, 2023

BREON PEACE
UNITED STATES ATTORNEY
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By: /s/ Deborah B. Zwany
Deborah B. Zwany
Assistant U.S. Attorney
(718) 254-6010

Dated: Jersey City, New Jersey
June 13, 2023

Brown, LLC
Counsel for Relator Samuel Caughron, M.D.
111 Town Square Place, Suite 400
Jersey City, New Jersey 07310

By: /s/ Patrick S. Almonrode
Patrick S. Almonrode
Jason T. Brown
(877) 561-0000

Dated: Washington, D.C.
June 13, 2023

Phillips & Cohen LLP
Counsel for Relator Doe
2000 Massachusetts Ave NW
Washington, D.C. 20036

By: /s/ Erika A. Kelton
Erika A. Kelton
Peter P. Budetti
John W. Tremblay
(202) 833-4567

SO ORDERED:
Brooklyn, New York
June 16, 2023

s/ LDH
HONORABLE LASHANN DEARCY HALL
United States District Judge, E.D.N.Y.